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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/571,514	02/21/2007	Stefan Kullberg	39943	8061
116 7590 05/06/2011 PEARNE & GORDON LLP 1801 EAST 9TH STREET SUITE 1200 CLEVELAND, OH 44114-3108				
EXAMINER				
LUONG, VINH				
ART UNIT		PAPER NUMBER		
3656				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/571,514

Applicant(s)

KULLBERG ET AL.

Examiner

Vinh T. Luong

Art Unit

3656

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-4, 6-9, 11 and 12 is/are rejected.
- 7) ☐ Claim(s) 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 December 2010 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 2, 2011 has been entered.
2. The drawings were received on December 29, 2010. These drawings are accepted by the Examiner as being in compliance with 37 CFR 1.84. Please see Form PTO-948 attached.
3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the claimed feature(s), such as, the throttle valve in claim 1 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will

be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1-4, 6, 7, and 11 are rejected under 35 USC 102(b) as being unpatentable over Nagashima (US 6,182,524 cited as a category X reference in the International Search Report).

Claim 1

Nagashima teaches a throttle control device for controlling a variable engine throttle valve CV (FIG. 1) of a hand held tool 1 grasped and supported by an operator, the device comprising a forwardly extending wire 17 (FIG. 12) for transmitting a variable range of motion from a manually-actuated throttle control lever 70 turnably arranged about a first axis 35 to the variable throttle valve CV, one rearward end of the wire being secured to a wire arm 45, 78, 77 that is turnably arranged about a second axis 75 and that is provided with one or several teeth 77 cooperating with corresponding teeth 73 on the throttle control lever 70 characterized in that the second axis 75 is arranged behind the first axis 35 with respect to the forward direction of the extending wire 17 and the second axis (16) is further from the variable throttle valve CV than the first axis 35 as seen in FIG. 1, wherein the wire 17 is coaxially rotatable with the wire arm 45, 78, 77 about the second axis 75. (Nagashima 12:17-45, claims 1-15)

As noted from FIG. 12, when the link 78 rotates about the second axis 75, the portion of Nagashima's wire 17 that wraps around the pulley 45 from the link 78 to the guide member 79 is rotated therewith. Therefore, Applicant's claim 1 is "fully met" by Nagashima when one interprets that Nagashima's wire arm comprises the pulley 45, the link 78, and the gear sector 77.

In other words, since claim 1 does not require the wire arm to be one-piece formed, thus, Nagashima's wire arm that comprises three pieces 45, 78, and 77 "read on" the claimed wire arm. It is well settled that anticipation law requires distinction be made between invention described or taught and invention claimed. It does not require that the reference "teach" what subject patent application teaches, it is only necessary that the claim under attack, as construed by the Court, "read on" something disclosed in the reference, i.e., all limitations of the claim are found in reference, or are "fully met" by it. *Kalman v. Kimberly Clark Corp.*, 218 USPQ 781, 789 (CAFC 1983). See also *ICU Medical Inc. v. Alaris Medical Systems Inc.*, 90 USPQ2d 1072 (Fed. Cir. 2009).

Claim 2

The wire arm 45, 78, 77 comprises a curved support surface 45 for the wire 17 as seen in the second axis direction (FIG. 12).

Claim 3

The support surface 45 extends at least around said second axis 75.

Claim 4

The support surface 45 at least partly is circular.

Claim 6

The wire 17 is a part of a Bowden cable 15. (Nagashima 6:48-55)

Claim 7

Nagashima teaches a safety lever 41, 51 that prevents the throttle control lever 70 from moving if the safety lever 41, 51 is not activated. (Nagashima 11:22-51)

Claim 11

On the one hand, Nagashima's throttle control device is capable of being used for controlling the throttle valve of a chain saw. On the other hand, referring the throttle control device to the merely intended use element, such as, the chain saw, is not accorded patentable weight. It is well settled that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then, it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

6. Claims 8, 9, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nagashima in view of Iwata (US 6,196,082).

Claim 8

Nagashima teaches the invention substantially as claimed. However, Nagashima does not teach the throttle control lever being under the influence of a first return spring.

Iwata teaches the first return spring 81 in order to influence the throttle control lever 90.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the first return spring in order to influence the throttle control lever of Nagashima as taught or suggested by Iwata. The use of the first return spring to influence the throttle lever of Nagashima would not have been uniquely challenging to a person of ordinary skill in the art because it is no more than "the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement" *KSR Int'l. Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) and it "does no more than yield predictable results." *KSR* at 1739.

Claim 9

Nagashima teaches the invention substantially as claimed. However, Nagashima does not teach the safety lever being under the influence of a second return spring.

Iwata teaches the second return spring 56 (FIG. 6) in order to influence the safety lever 51. (Iwata 10:64-11:31)

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the second return spring in order to influence the safety lever of Nagashima as taught or suggested by Iwata. KSR.

Claim 12

Iwata's second return spring 56 is one-piece formed (FIG. 6).

7. Claim 1 is further rejected under 35 U.S.C. 103(a) as being unpatentable over Nagashima in view of Persson et al. (US 5,142,934).

Assuming *arguendo* that claim 1 claims the wire arm to be formed as one-piece, Nagashima teaches the invention substantially as claimed. However, Nagashima's wire arm is formed as three pieces integrally connected together instead of one-piece.

Persson teaches the wire arm 11 formed as one-piece in order to ease the installation of the wire arm in Persson's hand held tool. (Persson: 1:37-50)

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form Nagashima's wire arm as one-piece in order to ease the installation of Nagashima's wire arm in Nagashima's hand held tool as taught or suggested by Persson. KSR. See also *In re Larson*, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA 1965) cited in MPEP 2144.04.

8. Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
9. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).
10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Kramer (throttle lever 5, safety lever 6, and spring 18).
11. Applicant's arguments filed February 2, 2011 have been fully considered but they are not persuasive.

DRAWINGS

The replacement drawings are accepted regarding the formality under 37 CFR 1.84. Nevertheless, the amendments to the claims necessitate a new objection to the drawings under 37 CFR. 1.83 as seen above.

35 USC 103

The previous art rejections under 35 USC 103 as being obvious based on Roelle, Roelle in view of Hammond, etc. are withdrawn in view of Applicant's amendments to the claims. Applicant's arguments with respect to claims 1-4 and 6-12 have been considered but are moot in view of the new ground(s) of rejection.

CONCLUSION

In view of the foregoing, Applicant's request for an allowance of the subject application is respectfully declined.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinh T. Luong whose telephone number is 571-272-7109. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on 571-272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vinh T Luong/
Primary Examiner, Art Unit 3656